

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0515

MANDATORY PENALTY  
IN THE MATTER OF

LINDA COUNTY WATER DISTRICT  
WASTEWATER TREATMENT PLANT  
YUBA COUNTY

This Complaint is issued to the Linda County Water District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2006-0096 (NPDES CA0079651).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the unincorporated area of Linda in Yuba County. Treated municipal wastewater is discharged to both the Feather River and to evaporation/percolation ponds that lie within the 100-year flood plain of the Feather River, a water of the United States. The ponds discharge directly to the Feather River during floods, and have hydraulic continuity with the Feather River.
2. On 22 September 2006, effective 11 November 2006, the Central Valley Water Board issued WDRs Order R5-2006-0096 to regulate discharges of waste from the wastewater treatment plant.
3. On 22 September 2006, the Board issued Time Schedule Order (TSO) R5-2006-0097 which required full compliance with the aluminum, ammonia, diazinon, iron, manganese, methoxychlor, and organochlorine pesticides effluent limitations by 21 September 2011. This Complaint considers the protection from Mandatory Minimum Penalties provided by TSO R5-2006-0097.
4. On 19 November 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0610 for mandatory minimum penalties for effluent violations from 1 January 2000 through 30 April 2008. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
5. On 18 February 2009, staff of the Central Valley Water Board sent the Discharger a draft Record of Violations (ROV). The Discharger's consultant responded that all of the discharges were to Discharge 002, not to Discharge 001. Central Valley Water Board staff has prepared a technical memorandum, included as Attachment B and discussed in Finding 13 of this Complaint, which explains adjustments made to the ROV.

6. Discharges to the evaporation/percolation ponds are subject to mandatory minimum penalties. Because Linda County has an NPDES permit for discharges to the evaporation/percolation ponds, discharges from these ponds to the Feather River are not considered violations if the discharges to the ponds comply with effluent limits contained in the permit. These limits were developed under the presumption that the ponds discharge to the Feather River – it is for this reason that the beneficial uses of the surface water were considered in developing these effluent limits. Had the discharges to these ponds been solely considered discharges to land, only the beneficial uses of the underlying groundwater would have been considered in developing the effluent limits. Unfortunately, the Discharger cannot interpret the permit in two different ways, as convenience suits it. Having obtained protection from violations that would have resulted from discharges from the ponds to the Feather River during floods, the Discharger cannot then claim that subsequent discharges are exempt from mandatory minimum penalties because this discharge is exclusively a discharge to land. If this were the case, the December 2005 inundation of the evaporation/percolation ponds would have been subject to enforcement under different subsections of CWC section 13385 governing unpermitted discharges to surface waters. These subsections allow a penalty calculation of up to \$10 per gallon discharged over 1,000 gallons. Multiplied by the capacity of the evaporation/percolation ponds (which admittedly discharged to the Feather River during this, and previous, flood events), this potential penalty would have been several orders of magnitude greater than the mandatory minimum penalties proposed in this Complaint.
7. Additionally, the ponds appear to be hydrologically connected to the Feather River. The 5 March 2003 hydraulic study required by WDR Order 5-00-165 states that "...it also appears that the ponds cause a localized mounding of the groundwater table. This results in some volume of effluent percolating in all directions away from the ponds, including toward the river." Even though WDR Order R5-2006-0096 occasionally characterizes the discharge from EFF-002 as a "discharge to land," the first page of the permit (as well as other portions) reinforces the concept that the ponds exhibit the characteristics of hydrologic interconnectivity with the Feather River by characterizing the Feather River as a "receiving waterbody" which receives waste from the plant, "...via evaporation/percolation ponds within the floodplain." Since the ponds appear to be hydrologically connected to the Feather River, the NPDES permit effluent limit violations are subject to mandatory minimum penalties.
8. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.”

9. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

10. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.a. include, in part, the following interim limitations which are in effect until commencement of discharge from the proposed diffuser or until 18 May 2010, whichever is sooner: “...*the discharge of treated wastewater shall maintain compliance with the following limitations at EFF-002...*”

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	instantaneous Maximum
Dibenzo(a,h)anthracene	µg/L	0.37	--	0.73	--	--

11. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b., include, in part, the following interim limitations which are in effect until commencement of discharge from the proposed diffuser or until 18 May 2010, whichever is sooner: “...*the discharge of treated wastewater shall maintain compliance with the following limitations at EFF-002...*”

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	45	65	--	--	--

12. WDRs Order No. R5-2006-0096 Effluent Limitations IV.A.2.b.iii. Total Residual Chlorine, states, in part: "Effluent total residual chlorine shall not exceed the following:"
  - c) 0.019 mg/L as a one-hour average;
13. As described in the technical memorandum mentioned in Finding No. 5, Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
  - Violations 1-4 were to Discharge Point 002, not Discharge Point 001. The discharge points were changed but the violations were retained.
  - Violation 4 was assessed a penalty because it was the fourth violation within 180 days.
14. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group II violation of the above effluent limitations contained in Order R5-2006-0096 during the period beginning 1 May 2008 and ending 31 December 2008. The violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.
15. According to the Discharger's self-monitoring reports, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in Order R5-2006-0096 during the period beginning 1 May 2008 and ending 31 December 2008. Two (2) of the non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **six thousand dollars (\$6,000)**.
16. The total amount of the mandatory penalties assessed for the cited effluent violations is **eighteen thousand dollars (\$18,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
17. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**THE LINDA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **eighteen thousand dollars (\$18,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **15 April 2009**:
  - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **eighteen thousand dollars (\$18,000)**; or
  - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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PAMELA C. CREEDON, Executive Officer

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16 March 2009

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Attachment A: Record of Violations  
Attachment B: Memorandum  
BLH: 16-Mar-09

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Linda County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0515 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. ☐ **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **eighteen thousand dollars (\$18,000)** by check, which will contain a reference to "ACL Complaint No. R5-2009-0515" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **15 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **11/12 June 2009** Central Valley Water Board meeting.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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(Print Name and Title)

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(Signature)

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(Date)

**ATTACHMENT A**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0515**

**Linda County Water District**  
**Wastewater Treatment Plant**

RECORD OF VIOLATIONS (1 May 2008 – 31 December 2008) MANDATORY PENALTIES  
(Data reported under Monitoring and Reporting Program R5-2006-0096)

	<u>Date</u>	<u>Violation Type</u>	<u>Unit</u> <u>s</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>Discharge Point</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9-Jul-08	Dibenzo(a,h)anthracene	µg/L	0.73	3.7	Daily	002	2	805936
2	31-Jul-08	Dibenzo(a,h)anthracene	µg/L	0.37	3.7	Monthly	002	2	805935
3	31-Jul-08	BOD	mg/L	45	46	Monthly	002	3	805931
4	31-Aug-08	BOD	mg/L	45	48	Monthly	002	4	805933
5	13-Sep-08	Chlorine	mg/L	0.019	0.39	1-hour	002	2	805934
6	31-Oct-08	BOD	mg/L	45	48	Monthly	002	4	805937
7	2-Nov-08	Chlorine	mg/L	0.019	0.051	1-hour	002	2	805938

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

**VIOLATIONS AS OF: 12/31/2008**

Group I Serious Violations:	0
Group II Serious Violations:	4
Non-Serious Exempt from MPs:	1
Non-serious Violations Subject to MPs:	2
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>6</u></b>

**Mandatory Minimum Penalty = (4 Serious Violations + 2 Non-Serious Violation) x \$3,000 = \$18,000**

- \* Discharge Point 001—To Feather River
- \* Discharge Point 002—To Ponds in Flood Plain



**Linda S. Adams**  
Secretary for  
Environmental Protection

## ATTACHMENT B

# California Regional Water Quality Control Board Central Valley Region

**Karl E. Longley, ScD, P.E., Chair**



**Arnold  
Schwarzenegger**  
Governor

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
Phone (916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

**TO:** Wendy Wyels, Supervisor  
NPDES Compliance and Enforcement

**FROM:** Barry Hilton, WRCE  
NPDES Compliance and Enforcement

**DATE:** 11 March 2009

**SIGNATURE:** \_\_\_\_\_

**SUBJECT:** LINDA COUNTY WATER DISTRICT ASSESSMENT OF MMPS

On 18 February 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period 1 May 2008 through 31 December 2008. The Discharger's consultant responded by telephone 27 February 2009. The following discusses the changes I made to the ROV during my preparation of the Administrative Civil Liability Complaint.

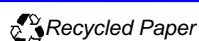
### **Discharge Point**

Violations 1-4. The Discharger stated that all discharges were to Discharge Point 002, not Discharge Point 001. I made the changes. These changes did not affect the number of violations subject to mandatory minimum penalties.

### **BOD**

Violation 4. This violation is subject to a mandatory minimum penalty because there were three violations during the prior 180 day period. I increased the number of chronic violations from five to six.

**California Environmental Protection Agency**





**Linda County Water District  
Wastewater Treatment Plant**

**RECORD OF VIOLATIONS (1 May 2008 – 31 December 2008) MANDATORY PENALTIES**  
(Data reported under Monitoring and Reporting Program R5-2006-0096)

	<u>Date</u>	<u>Violation Type</u>	<u>Unit</u> <u>s</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period</u> <u>Type</u>	<u>Discharge Point</u>	<u>Remarks</u>	<u>CIWQ</u> <u>S</u>
1	9-Jul-08	Dibenzo(a,h)anthracene	µg/L	0.73	3.7	Daily	<del>001</del> 002	2	805936
2	31-Jul-08	Dibenzo(a,h)anthracene	µg/L	0.37	3.7	Monthly	<del>001</del> 002	2	805935
3	31-Jul-08	BOD	mg/l	45	46	Monthly	<del>001</del> 002	3	805931
4	31-Aug-08	BOD	mg/l	45	48	Monthly	<del>001</del> 002	<del>34</del>	805933
5	13-Sep-08	Chlorine	mg/l	0.019	0.39	1-hour	002	2	805934
6	31-Oct-08	BOD	mg/l	45	48	Monthly	002	4	805937
7	2-Nov-08	Chlorine	mg/l	0.019	0.051	1-hour	002	2	805938

Remarks:

5. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
6. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
7. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
8. Non-serious violation subject to mandatory penalties.

**VIOLATIONS AS OF: 12/31/2008**

Group I Serious Violations:	0
Group II Serious Violations:	4
Non-Serious Exempt from MPs:	<del>21</del>
Non-serious Violations Subject to MPs:	<del>42</del>
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>56</u></b>

**Mandatory Minimum Penalty = (4 Serious Violations + 42 Non-Serious Violation) x \$3,000 = \$1518,000**

- \* Discharge Point 001—To Feather River
- \* Discharge Point 002—To Ponds in Flood Plain